

## COMMERCIAL UMBRELLA LIABILITY COVERAGE

### DIFFERENCE IN CONDITIONS AND DIFFERENCE IN LIMITS

This endorsement changes the policy. Please read it carefully.

Certain words and phrases in bold have special meaning as defined below or in the Forms to which this endorsement is attached.

This endorsement modifies insurance provided under the following:

#### COMMERCIAL UMBRELLA LIABILITY COVERAGE

Whereas, the Insurer, or an Intact Insurance company, has issued a policy in the United States of America (hereinafter described as a “**local insurance policy**”), which covers loss that would also have been covered by this Policy (hereinafter described as “**Master Policy**”), the following conditions shall apply:

##### 1. DIFFERENCE IN CONDITIONS

In the event of a covered loss under this **Master Policy**, it is agreed that if:

- 1.1. a **local insurance policy** is in place; and
- 1.2. there is a difference in coverage, such that coverage of the loss is covered under the terms of this **Master Policy** but not covered under the terms of the **local insurance policy**, due to the fact that its terms, conditions, exclusions and definitions are not as broad as this **Master Policy**;

this **Master Policy** shall cover that part of the loss that is not covered under the **local insurance policy**.

The most that shall be paid under this **Master Policy** is the limit of insurance applicable to the loss covered under this **Master Policy**.

##### 2. DIFFERENCE IN LIMITS

In the event of a covered loss under this **Master Policy**, it is agreed that if:

- 2.1. a **local insurance policy** in place covers the loss; and
- 2.2. this **Master Policy** also covers the same loss; and
- 2.3. the limits of insurance as provided under this **Master Policy** are greater than the limits of insurance available to the Insured under the **local insurance policy**;

this **Master Policy** will pay the difference between the **local insurance policy** limits applicable to the covered loss and the limits of insurance applicable to the covered loss under this **Master Policy**.

**This Difference in Limits coverage is provided subject to following conditions:**

- 2.4. the loss must be covered under both this **Master Policy** and the **local insurance policy**; and
- 2.5. the limits of insurance applicable to the covered loss under the **local insurance policy** must be exhausted; and
- 2.6. any deductible or retention under the **local insurance policy** must be applied.

These Difference in Conditions and Difference in Limits coverages described under 1. and 2. shall not apply if the Insured is unable to collect in full any loss payable under a **local insurance policy** due to the Insured not fully complying with the conditions of such **local insurance policy**.

It is also a condition of these Difference in Conditions and Difference in Limits coverages described under 1. and 2. that the **non-program policy** must be maintained in full force and effect during the full term of this **Master Policy**. Any renewals of such **non-program policy** cannot be more restrictive than the coverage provided by the expiring **non-program policy**. If during the full term of this **Master Policy** the **non-program policy** is not maintained in full force and effect, or if there are any reductions, without the consent of this **Master Policy** insurer, in the coverage provided under the **non-program policy**, the coverage provided by this **Master Policy** will then apply in the manner as if the coverage had been maintained and unchanged.

Moreover, these Difference in Conditions and Difference in Limits coverages shall not apply to any additional coverage provided by the **non-program policy** that is not provided by this **Master Policy**.

##### 3. ADDITIONAL CONDITIONS

The following additional conditions apply to this **Master Policy**:

###### 3.1. E.R.I.S.A. Exclusion

The coverage afforded by this **Master Policy** shall not apply to any liability, including Fiduciary Liability, arising out of any employee benefit or retirement plans or programs, the Employee Retirement Income Security Act of 1974 (E.R.I.S.A), the Pension Reform Act of 1974, the Retirement Equity Act of 1984; or any amendments thereto.

###### 3.2. Employer's Liability Exclusion

The coverage afforded by this **Master Policy** shall not apply to:

###### **Employer's Liability**

**Bodily injury** to an **employee** of the Insured, who is resident outside of Canada, arising out of and in the course of:

- 3.2.1. employment by the Insured; or
- 3.2.2. performing duties related to the conduct of the Insured's business.

This exclusion applies:

- 3.2.3. whether the Insured may be liable as an employer or in any other capacity; and
- 3.2.4. to any obligation to share **compensatory damages** with or repay someone else who must pay **compensatory damages** because of the injury.

3.3. Adherence to Local Laws and Local Insurance Requirements

Nothing contained in this **Master Policy** can require anyone to commit any act that is contrary to the laws of any country included in the coverage territory. In the event of a conflict between the insurance provided by:

3.3.1. this **Master Policy** and;

3.3.2. any statute, law, ordinance, or regulation of any country or any province, territory, state or other administrative division of any country, the latter shall have precedence.

However, only that part of the policy that is in conflict with such statute, law, ordinance, or regulations, shall be modified to comply with such legal requirements in the event it is necessary. The remaining valid portions of the policy shall remain in full force and effect.

3.4. Currency

All limits of insurance, premiums and other amounts as expressed in this **Master policy** are in Canadian currency.

Any necessary currency conversion for the payment of **compensatory damages** will be calculated based on the rate of exchange on the date of judgment or settlement. Any necessary currency conversion due to the payment of defense costs, medical payments, supplementary payments or any other damages will be calculated based on the rate of exchange on the date immediately preceding the date the payment is processed (Ref: [www.bloomberg.com/Canada](http://www.bloomberg.com/Canada)).

3.5. Legal Action against the Insurer

The Insured may bring action against the Insurer under this **Master Policy** provided he has complied with all the terms and conditions of this **Master Policy** and that the action is brought within one (1) year (or longer where required by regulation, law, statute) after the date on which the loss has occurred.

Any disputes based upon, arising from or in connection with any actual or alleged coverage under this endorsement shall be subject to the jurisdiction of a court of competent jurisdiction within Canada.

3.6. Payments

The Insurer shall make payments for sums the Insured becomes legally obligated to pay for **compensatory damages** or any other damages insured under this **Master Policy**, to which the Difference in Conditions and Difference in Limits coverages apply. The Insurer shall indemnify the first Named Insured under this **Master Policy** for these payments, and for other costs incurred by the Insured covered under this **Master Policy**.

3.7. Combined Limits

All payments made to settle claims or **actions** brought under any **local insurance policy**, to which the Difference in Conditions and Difference in Limits coverages apply, shall reduce the Limits of Insurance of this **Master Policy** in the same manner as if they were paid under this **Master Policy**.

4. DEFINITIONS

For the purposes of this endorsement:

- 4.1. **Master policy** means the insurance policy that has been issued by Intact Insurance in Canada, excluding local insurance policies issued within the United States of America.
- 4.2. **Local insurance policy** means insurance provided under either a **local program policy** or a **non-program policy** within the United States of America.
- 4.3. **Local program policy** means a primary policy that has been issued within the United States of America at the Insurer's discretion and control.
- 4.4. **Non-program policy** means a policy that has been issued within the United States of America, without the Insurer's discretion and control, and that has been scheduled in this **Master Policy**.

**All other terms and conditions of the policy to which this endorsement applies remain unchanged.**